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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,469	08/17/2000	Douglas J. Herst	202N-095	6333

7590 03/13/2003
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EXAMINER

LEE, Y MY QUACH

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/641,469

Applicant(s)

Herst et al.

Examiner

Y Quach Lee

Group Art Unit

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— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 12/4/02
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1 to 44 is/are pending in the application.
- Of the above claim(s) 4 to 7, 12, 13 and 38 to 44 is/are withdrawn from consideration.
- ☒ Claim(s) 1 to 3, 8 to 11, 14 to 33 is/are allowed.
- ☒ Claim(s) 34 is/are rejected.
- ☒ Claim(s) 35 to 37 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

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DETAILED ACTION***Response to Arguments***

1. Applicant's arguments filed December 4, 2002 have been fully considered but they are not persuasive. Applicant argued that Herst et al. does not disclose an up light for indirect lighting produced directly from the top surface of the light source, while at the same time down light produced for down lighting through a brightness reduction cover element positioned below and in close proximity to the bottom surface of the light source. This is not found persuasive. The up light of Herst et al. is indeed produced directly from the top surface of the light source (15) because the light is directly emitted from the top surface of the light source. Therefore, the light that emits from the top surface of the light source is considered to be producing an up light, and this up light that travels to the reflector and being reflected is considered to be indirect lighting, while at the same time the light that emits from the light source (15) directly through the lens element (17) produces a down light. Note that since the lens cover element of Herst et al. functions to reduce the brightness of the light or the bright spots (column 2, lines 5 to 6, lines 34 to 35 and ...), this lens element therefore meets the limitation of "a brightness reduction cover element". Note also that the term "close proximity" is a broadly recited and/or relative term which does not provide a standard for ascertaining the requisite degree. This cover element of Herst et al. is therefore considered to be in close proximity to the bottom surface of the light source. Applicant also argued that the cover element is not sized and shaped to surround the bottom surface portion of the light source so as to simulate a relatively low brightness light source. Note that since the cover element of Herst et al. is positioned below the light source and can sufficiently contain the bottom surface portion of the light source (note figures 1 and 3 to 7), this cover element therefore has a size and a shape that surrounds the bottom surface portion of the light source. Note also that the term "a relatively low ..." is a broadly recited and/or relative term which does not provide a standard for ascertaining the requisite degree, and since the cover element of Herst et al. functions to mask or reduce the brightness of the light or bright spots to provide visual comfort to create different psychological environments, this cover element indeed provides a simulation of "a relatively low brightness light source" especially in comparison to

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the light source that does not include the cover element. Herst et al. therefore anticipate the method as recited in claim 34. Rejection of claim 34 under Herst et al. remains and follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Herst et al.

Herst et al. disclose a method of producing direct and indirect lighting from an active light source (15) having top and bottom surface portions with relatively high surface brightness comprising the step of producing up light for indirect lighting directly from the top surface portion of the light source, the step of producing down light for direct lighting through a brightness reduction cover element (17, 45, 61) positioned below and in close proximity to the bottom surface portion of the light source, and the brightness reduction cover element sized and shaped to surround the bottom surface portion of the light source so as to simulate a relatively low brightness light source (column 2, lines 5 to 6, lines 34 to 35, column 3, lines 18 to 19, ...) having a larger surface area than the surface area of the light source.

4. Claims 1 to 3, 8 to 11 and 14 to 33 are allowed.

5. Claims 35 to 37 would be allowable if rewritten to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

6. Claims 1 to 3, 8 to 11, 14 to 33 and 35 to 37 contain allowable subject matter because the prior art does not teach the combination subject matter as claimed.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Y Quach Lee whose telephone number is 703-308-1939. The examiner can normally be reached on Tuesday and Thursday from 8:30 am to 4:30 pm.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Y. Q.
March 6, 2003


Y Quach Lee
Patent Examiner
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